S.B.CIVIL WRIT PETITION NO.3156/2007
(Shakti Dan Vs. State & ors.)

DATED : 27th August 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.P.D.Vaishnav for the petitioner

Having heard learned counsel for the petitioner and having examined the material placed on record, this Court is satisfied that no case for interference in the award dated 15.12.2006 (Annex. 8) made by the Labour Court, Jodhpur in case No.2/2003 in extra-ordinary writ jurisdiction is made out; and this writ petition does not merit admission.

The petitioner earlier filed a writ petition seeking to question his dismissal from service under the order dated 15.12.1994 (Annex.5); however the said writ petition was permitted to be withdrawn to agitate the matter before he Labour Court in reference to be made by the State Government; and then, the Labour Court considered the reference on the question of legality and propriety of the said order dated 15.12.1994.

It appears from the facts noticed by the Labour Court in its award dated 15.12.2006 that according to the petitioner, while removing him from service, no any enquiry was made nor any notice was given. However, such assertions of the petitioner have been found to be incorrect with reference to the

documentary evidence produced by the non-applicants, inter alia, showing that there had been at least two cases where the petitioner was found guilty of embezzlement/misfeasance in the audit reports of the year 1981-82 and 1987-89; that in the proceedings under Section 74 of the Rajasthan Co-operative Societies Act, 1965 (‘the Act of 1965’) the petitioner was found guilty of causing loss to the society and was directed to make deposit of the disputed amount respectively in the sum of Rs.16,390.15 and Rs.12,759.13; and that the petitioner was thereafter proceeded against in departmental enquiry wherein he was served with notice and the order of dismissal was passed after due enquiry. The petitioner has merely attempted to avoid stating correct facts before the Labour Court; but, the Labour Court has come to the conclusion on the basis of material produced on record that the enquiry was conducted fairly and in accordance with law; and has found no reason to interfere with the order of punishment. The findings essentially remain the findings on facts and no case is made out for interference in writ jurisdiction of this court.

It has been suggested during the course of submissions in this writ petition that the matter had already been dealt with by the Joint Registrar, Co-operative Societies and the petitioner had deposited the amount in question though disputing his liability; and on the same allegations, he could

not have been proceeded again in the departmental proceedings. The submission is ill-founded and cannot be accepted. The proceedings for recovery of surcharge under Section 74 of the Act of 1965 by the Registrar with reference to the loss caused to the society by the petitioner were entirely different; and had not taken away the right of the society of taking appropriate proceedings against the petitioner for his misconduct; nor the petitioner acquired any immunity from departmental proceedings. The fact that the petitioner was found guilty of misfeasance is not in dispute; and merely depositing of the amount of loss caused by him, as per the order made under Section 74 of the Act of 1965, cannot result in absolving him of liability to be proceeded departmentally for such misconduct. In view of undeniable fact situation of this case, and looking to the nature of charges, punishment of dismissal cannot be said to be inappropriate or disproportionate.

The Tribunal has examined the entire matter in sufficient detail and there appears no ground to interfere in the order impugned.

The writ petition fails and is, therefore, rejected.

(DINESH MAHESHWARI),J.

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